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May 20, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation -- Request by Progeny LMS, LLC for Waiver of Certain
Multilateration Location and Monitoring Service Rules (WT Docket No. 11-49)

Dear Ms. Dortch:

UTC is hereby filing the following *ex parte* notice in connection with the above-referenced proceeding. On Thursday, May 16, 2013, the undersigned on behalf of the Utilities Telecom Council (UTC) conducted a telephone call with Louis Peraertz, Legal Advisor on Wireless, International, and Public Safety issues in the Office of Commissioner Mignon Clyburn. The substance of the discussions was consistent with the comments filed by UTC on the record.

Specifically, UTC expressed its concern that Location and Monitoring Services (LMS) by Progeny LMS, LLC could cause unacceptable interference to millions of smart grid and smart meter devices that utilities and other critical infrastructure industries use to provide essential energy and water services to the public at large. UTC urged the Commission, consistent with the recently passed resolution by the National Association of Regulatory Utility Commissioners (NARUC),¹ not to authorize commercial deployment and operation of Progeny's systems until further testing can be conducted and it is shown that no unacceptable interference will be caused to unlicensed operations in the 902-928 MHz band, including those by utilities and other critical infrastructure industries.

Further testing is necessary because Progeny has only conducted tests with two types of smart metering equipment and one type of equipment used for wireless internet services, and the results of even these few tests raise concerns that Progeny's system would cause widespread interference that would significantly impair the performance of unlicensed devices throughout the 902-928 MHz band. Performance was degraded by nearly 50% in tests of some equipment, which would constitute

¹ NARUC *Resolution to Promote Co-Existence in the 902-928 MHz Spectrum Band*, Sponsored by the Committee on Telecommunications, Adopted by the NARUC Board of Directors, February 6, 2013.

unacceptable interference by any definition. In fact, interference was reported on the record by Taggle Systems, bearing out the interference concerns raised by the test results.²

Moreover, Progeny has not tested SCADA and DA equipment in the 902-928 MHz band, which must operate at more stringent performance standards than the smart metering equipment that Progeny has tested. Interference to these types of equipment would affect mission critical communications that support the reliability of essential electric, gas and water services. As PGE recently observed, its SCADA systems did experience unacceptable interference from Progeny's operations. Although Progeny was able to correct the interference, "the time it took to make this adjustment and the fact that similar incidents could occur throughout [PGE's] system is of significant concern to PGE and its customers who rely on its network to operate safely and reliably at all times."³ As PGE concluded, "[t]his incident demonstrates the need for the Commission to order that Progeny conduct additional joint testing of its systems before the Commission can conclude that Progeny has met its obligations to Part 15 users."⁴ The magnitude of the risk involved – potentially jeopardizing the reliability of electric, gas and water services to the public at large – clearly dictates the need for further testing to ensure that Progeny's systems would not cause unacceptable interference to SCADA equipment in the 902-928 MHz band.

Meanwhile, there is no need to rush to judgment to authorize the commercial deployment of Progeny systems. In tests of various different 9-1-1 location accuracy systems – including Progeny -- CSRIC WG3 concluded that "even the best location technologies tested have not proven the ability to consistently identify the specific building and floor, which represents the required performance to meet Public Safety's expressed needs."⁵ Furthermore, CSRIC WG3 found that "the results clearly indicate additional development is required to ensure the positional coordinates provided on an emergency caller sheltered indoors result in an 'actionable location' for emergency response, especially in urban and dense urban environments."⁶ While Progeny attempts to improve the accuracy of its systems, the Commission should require Progeny to conduct cooperative testing with other Part 15 devices that operate between 902-928 MHz, including the aforementioned SCADA and DA systems.

The balance of the harms clearly weigh in favor of further testing. Progeny relies heavily on support from several public safety related organizations. Yet, the support from these organizations has been for location accuracy, not necessarily for Progeny. Similarly, Progeny makes unsupported claims

² Letter from Gordon Foyster and Chris Andrews, Taggle Systems, to Marlene H. Dortch, Secretary, Federal Communications Systems, WT Docket No. 11-49 (filed March 18, 2013).

³ Letter from Melissa A. Lavinson, Vice President Federal Affairs, PG&E Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 at 2 (filed May 17, 2013).

⁴ *Id.* at 1.

⁵ The Communications Security, Reliability and Interoperability Council III, Working Group 3, E-9-1-1 Location Accuracy Indoor Location Test Bed Report (Mar. 14, 2013) ("CSRIC Report") at 54-55 (visited at http://transition.fcc.gov/bureaus/pshs/advisory/csric3/CSRIC_III_WG3_Report_March_%202013_ILTestBedReport.pdf).

⁶ *Id.* at 8.

that “[m]ajor participants in the wireless communications industry, including wireless carriers, GPS chipset manufacturers, and handset manufacturers, have expressed their intent to include Progeny’s software in the specifications for their next generation of wireless devices,” and that these same wireless industry participants would back away if there were any further delay in the authorization of Progeny.⁷ By comparison, utilities and other CII as well as other operators in the 902-928 MHz band do stand a real threat to their interests if Progeny is allowed to deploy without adequately protecting their unlicensed operations against unacceptable interference. This would upset their reasonable investment backed expectations when they deployed millions of smart grid and other unlicensed devices in the 902-928 MHz band. Meanwhile the consumers that rely upon the services that they provide would face the risk of having their services compromised or cut off due to interference from Progeny systems. These services include essential electric, gas and water services, as well as Internet access in rural areas where there are no other sources of Internet access. The choice is clear; further testing won’t harm Progeny or public safety but further deployment will harm Part 15 operators and the consumers they serve.

There is widespread opposition to commercial deployment of Progeny systems in the 902-928 MHz band. For example, over 65 companies and organizations – many from critical infrastructure industries -- signed an opposition to Progeny’s waiver request.⁸ More recently, companies like CISCO, Google, and Microsoft have stepped forward to express their concerns about interference from Progeny and the need for further testing.⁹ These are just some of the numerous parties that oppose commercial deployment of Progeny and which support further cooperative interference testing with Progeny. Given this widespread opposition, the Commission should require Progeny to conduct further interference tests with Part 15 devices.

It is clear that Progeny will not voluntarily agree to further tests and that the Commission must intervene and require further testing. As the Part 15 Coalition recently noted, several companies have formally requested Progeny to engage in further testing and have received no response from Progeny. This is consistent with Progeny’s response to UTC’s request to conduct further testing with SCADA devices in the 902-928 MHz band. Progeny denied that it had ever made the offer to conduct such tests and claimed that no further testing was necessary. Thus, UTC concluded that “if any further testing is going to be conducted using utility SCADA networks, the Commission is going to need to force Progeny to do it.”¹⁰

⁷ Letter from Bruce Olcott, Counsel to Progeny LMS, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 at 2-3 (filed May 6, 2013).

⁸ Letter from Joint Progeny Opposition Parties to Julius Genachowski, Chairman, Federal Communications Commission in ET Docket No. 11-49 (filed Jan. 11, 2013).

⁹ See Letter from Mary L. Brown, Director, Cisco Government Affairs to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 (filed Apr. 18, 2013); Letter from Aparna Sridhar, Telecom Policy Counsel, Google Inc. to Mr. Julius Knapp, Chief, Office of Engineering and Technology and Ms. Ruth Milkman, Chief, Wireless Telecommunications Bureau in ET Docket No. 11-49 (filed Apr. 18, 2013); and Letter from Paula Boyd, Director, Government and Regulatory Affairs, Microsoft Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 (filed Apr. 26, 2013).

¹⁰ Letter from Brett Kilbourne to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 at 3 (filed Mar. 5, 2013).

Finally, UTC agrees with the Part 15 Coalition that it is not enough for Progeny to promise to correct interference after the fact.¹¹ Instead, the Commission must develop rules that prevent Progeny from causing unacceptable interference to other Part 15 operations, consistent with the conditional waiver and the Commission's rules and policy. This is especially important considering the importance of the use of the band by utilities and other CII, as well as other unlicensed operators in the band.

Please do not hesitate to contact the undersigned if you have any questions

Respectfully,

A handwritten signature in cursive script, appearing to read "Brett Kilbourne".

Brett Kilbourne

cc: Louis Peraertz

¹¹ See Letter from Laura Stefani, Counsel for the Part 15 Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission in ET Docket No. 11-49 (filed May 13, 2013).